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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,490	03/08/2001	Christopher Keith	IVEN125530	4750
52531 7590 06/01/2007 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER FELTEN, DANIEL S	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/801,490	<b>Applicant(s)</b> KEITH, CHRISTOPHER	
	<b>Examiner</b> Daniel S. Felten	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/20/2007</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Receipt of the Request for Continued Examination ("RCE") filed March 20, 2007 is acknowledged.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on March 20, 2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has provided claim language that suggests or makes optional but does not require the steps to be performed in the claims. For example "wherein the premium adds or subtracts from a particular price..." the "wherein" clauses make the claim indefinite because it is uncertain if the premium adds to the particular price or subtracts from the particular price. "and *if* a portion of the order is determined to be unmatchable..." is considered optional language because the word "if" connotes the potential or possibility of that the order will be determined to be unmatched not that it is unmatched. Therefore the aforementioned limitations do not limit the scope of the claim(s) [see MPEP 2106 and 2111.04]

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It is also submitted that the claim does not provide a limitation by which one of ordinary skill is able to determine as to what occurs when orders are determined to be matched.

It is also submitted that the words “matchable” and “unmatchable” are indefinite because they connote that the premiums have the ability or potential to be matched or unmatched. It is suggested that the applicant use definite wording (e.g., --matched - - or – unmatched --).

Re claim 30, is indefinite because it is uncertain

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain et al (US 6,343,278) in view of Lupien et al (US 5,689,652).

***Re claim 1***, a method of facilitating trading of orders in a batch process, comprising:

Automatically determining premiums offered or demanded for the orders in a batch at a particular price (see Jain, Abstract; col. 8, ll. 55+), and

Automatically pairing the orders in accordance with their respective premiums(see Jain, col. 1, ll. 39-46; and col. 2, ll. 4-13; and col. 9, ll. 20+).

***Re claim 3***, wherein determining the premiums occurs when the orders in the batch are posted to a batch process (see Jain, col. 9, ll. 21-37).

**Re claim 4**, Wherein automatically pairing includes giving preference to orders offering premiums, the preference being proportional to the size of the premium (see Jain, col. 9, ll 32-41).

**Re claim 5**, Wherein automatically pairing includes giving preference to orders demanding premiums, the preference being inversely proportional to the size of the premium (see Jain, col. col. 9, ll. 42-49).

**Re claim 6**, automatically setting the price for each pairing based on the premiums associated with the orders in the pairing (see Jain, col. 9, ll. 66 to col. 10, ll. 22).

**Re claim 7**, wherein each pairing includes a buy order and a sell order, and automatically setting sets the pairing price to a market price when both orders are offering a premium (see Jain, col. 8, ll. 55 to col. 9, ll. 19)

**Re claim 8**, wherein each pair includes a buy order and a sell order and the buy order offer premium is at least the sell order demand premium and automatically setting sets the pairing price to a market price plus the sell order premium (see Jain, col. 9, ll. 21+)

**Re claim 9**, wherein each pairing includes a buy order and a sell order and the sell order offer premium is at least the buy order demand premium, and automatically setting sets the pairing price a market price less the buy order premium (see Jain, col. 9, ll. 66 to col. 10, ll. 12).

**Re claim 10**, wherein each pairing includes a buy order and a sell order, and automatically setting marks the pairing as unmatchable when the premiums indicate lack of a mutually acceptable price

**Re claim 11**, wherein the premiums indicate lack of mutually acceptable price when the buy order demand premium is greater than the sell order offer premium (ii) the sell order is

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greater than the buy order offer premium ore (iii) the buy order and the sell order are both demanding premiums (see Jain, col. 10, ll. 47+)

*Re claim 12*, further comprising automatically adjusting the price for a pairing when one of the orders in the pairing is also participating in the unmatchable pairing (see Jain, col. 10, ll. 47+)

*Re claim 13*, automatically converting liquidity curves respectfully associated with the orders into premiums offered or demanded for orders and (see Jain, col. 8, ll. 55+)

Automatically posting the orders with premiums to a batch process, the batch process for automatically pairing the orders in accordance with their perspective premiums (see Jain, col. 1, ll. 39-46; and col. 9, ll. 20+; and esp. col. 11; ll. 37+)

*Re claims 2, 14 and 15*, The teachings of Jain have been discussed above showing a method of facilitating trading of orders in a batch process. Jain fails to disclose wherein determining premiums occurs in accordance with respective *liquidity curves* associated with the orders in the batch.

Lupien discloses trading orders in a batch process in accordance with respective liquidity curves associated with the batch (see Lupien, see figs. Abstract, col. 3, ll. 43 to col. 4, ll. 40). It is well known that a large quantity of stock that is disproportional to the stock's average trading volume, the buyers or seller will pay a premium to the market price of the stock in order to execute the trade. One of ordinary skill in the art at the time of Jain would have recognized the notoriously old and well known batch order process and have been motivated to integrate

liquidity curves in association with a batch (or *group*) of orders to allow traders to readily enter combinations of orders and trading strategies, as well as give users a degree of control and flexibility by providing greater market liquidity. Thus such a feature would provide greater user satisfaction and thus constitute an obvious expedient well within the ordinary skill in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from

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a USPTO Customer Service Representative or access to the automated information system, call  
800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Daniel S Felten

Examiner

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DSF

05/25/2007